

§ 21.8016

38 CFR Ch. I (7–1–13 Edition)

claims for benefits and services under this subpart.

[74 FR 31857, July 6, 2009]

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1834)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

BASIC ENTITLEMENT REQUIREMENTS

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(i) Section 21.250(a) and (b)(2);

(ii) Section 21.252;

(iii) Section 21.254;

(iv) Section 21.256 (not including paragraph (e)(2));

(v) Section 21.257; and

(vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of § 21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in § 21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and

Department of Veterans Affairs

§ 21.8030

does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and becomes suitably employed, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage*—(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-

half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

[67 FR 72565, Dec. 6, 2002, as amended at 75 FR 3170, Jan. 20, 2010]

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1832)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

EVALUATION

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)